

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

YOLANDA MCGRAW, individually, and
as the representative of all persons
similarly situated,

Plaintiff,

V.

GEICO GENERAL INSURANCE
COMPANY,

Defendant.

CASE NO. C16-5876BHS

ORDER GRANTING
DEFENDANT'S MOTIONS TO
STAY AND FOR LEAVE TO
FILE OVER-LENGTH BRIEF,
RENOTING DEFENDANT'S
MOTION FOR
RECONSIDERATION, AND
REQUESTING RESPONSE

This matter comes before the Court on Defendant GEICO General Insurance Company’s (“GEICO”) motion to stay, motion to file over-length brief, and motion for reconsideration. Dkts. 51–53. The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby rules as follows:

I. PROCEDURAL HISTORY

On March 13, 2014, Plaintiff Yolanda McGraw (“McGraw”) was involved in a car accident. Dkt. 1, Ex. A (“Comp.”) ¶ 1.8. McGraw’s car was damaged, and the repairs cost \$8,140.07. *Id.* McGraw’s car was worth less after it was repaired than before the

1 accident. *Id.* ¶ 1.10. McGraw had a car insurance policy with Defendant GEICO
2 General Insurance Company (“GEICO”). *Id.* ¶ 1.9. McGraw sought underinsured
3 motorist coverage under her GEICO policy. *Id.* GEICO did not compensate McGraw for
4 her car’s diminished value. *Id.* ¶ 1.11.

5 On April 17, 2015, McGraw filed a class action complaint against GEICO in
6 Pierce County Superior Court. *See id.* McGraw claims that GEICO has continuously
7 failed to pay its policyholders’ diminished value loss. *Id.* ¶ 5.1. McGraw seeks to certify
8 the following class:

9 All GEICO insureds with Washington policies issued in Washington
10 State, where the insureds’ vehicle damages were covered under
Underinsured Motorist coverage, and

- 11 1. The repair estimates on the vehicle (including any
supplements) totaled at least \$1,000; and
- 12 2. The vehicle was no more than six years old (model year plus
five years) and had less than 90,000 miles on it at the time of
the accident; and
- 13 3. The vehicle suffered structural (frame) damage and/or
deformed sheet metal and/or required body or paint work.

15 Excluded from the Class are (a) claims involving leased vehicles or
16 total losses, and (b) the assigned judge, the judge’s staff and family.

17 *Id.* ¶ 5.3. McGraw alleges that the number of class members will be about 2,586 and the
18 average damages will be about \$1,460 per class member. *Id.* ¶ 2.4. Based on these
numbers, McGraw alleges that the amount in controversy is \$3,775,560. *See id.*
19 McGraw asserts a single breach of contract claim. *Id.* ¶¶ 6.1–6.5.

20 On October 13, 2016, GEICO removed the matter to this Court. Dkt. 1. GEICO
21 alleges that “[a] sampling of GEICO’s records reveals an average of \$1,698.99 per claim
22

1 with a potential class size including as many as 2734 claims for a total of \$4,645,038.66
 2 in potential class member claims.” *Id.* ¶ 22. GEICO also alleges that the class would be
 3 entitled to attorney’s fees under the Ninth Circuit benchmark for class actions, McGraw’s
 4 retainer agreement with her attorney, or *Olympic Steamship Co. v. Centennial Ins. Co.*,
 5 117 Wn.2d 37 (1991) (en banc). *Id.* ¶¶ 23–25.

6 On November 14, 2016, McGraw moved to remand. Dkt. 19. On February 27,
 7 2017, the Court granted the motion. Dkt. 49. On March 9, 2017, GEICO moved for a
 8 stay of the remand, leave to file an over-length brief, and reconsideration. Dkts. 51–53¹.

9 II. DISCUSSION

10 “No response to a motion for reconsideration shall be filed unless requested by the
 11 court. No motion for reconsideration will be granted without such a request.” Local
 12 Rules, W.D. Wash. LCR 7(h)(3).

13 In this case, GEICO’s motion raises a host of issues that, at the very least, should
 14 be more fully developed on the record. Thus, the Court requests a response from
 15 McGraw on at least the following issues:

- 16 1. If the complaint raises coverage issues, was the case removable on its face?
 - 17 See, e.g., *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) (“The first thirty-day removal period is triggered ‘if the case stated by the initial pleading is removable on its face.’”) (citing *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir.2005)).
- 19 2. If a complaint puts a party on notice that attorney’s fees may be awarded pursuant to a statute such that the removing party requests that they be

21 ¹ Although GEICO violated the Local Rules of Procedure, the Court grants the motion to
 22 file an over-length brief because McGraw will be allowed additional pages in response. See
 Local Rules, W.D. Wash. LCR 7(f)(1).

1 included in opposing a motion to remand, does the complaint show that a
2 common law award of attorney's fees may also be recoverable for a
3 coverage dispute? *See McGraw v. GEICO*, 15-5336BHS, (W.D. Wash),
4 Dkt. 17 at 10.

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6 3. If a complaint involves a coverage dispute and a claim dispute, are all
7 attorney's fees incurred resolving both disputes recoverable under *Olympic*
8 *Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991) or only the fees
9 incurred resolving the coverage dispute?

10 4. Is there any evidence in the record to establish reasonable attorney's fees
11 for resolving the coverage dispute in this matter in light of *Moeller v.*
12 *Farmers Ins. Co. of Washington*, 173 Wn.2d 264, 274, 267 P.3d 998, 1002
13 (2011)?

14 McGraw may address any other issue as well. If McGraw requires additional pages, she
15 shall file a motion in accordance with the local rules.

III. ORDER

16 Therefore, it is hereby **ORDERED** that GEICO's motion to stay remand (Dkt. 51)
17 and motion to file over-length brief (Dkt. 52) are **GRANTED**; McGraw may file a
18 response no longer than twelve pages no later than March 21, 2017; GEICO may file a
19 reply no longer than six pages no later than March 24, 2017; and the Clerk shall renote
20 GEICO's motion for reconsideration (Dkt. 53) for consideration on the Court's March 24,
21 2017 calendar.

22 Dated this 13th day of March, 2017.



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BENJAMIN H. SETTLE
United States District Judge